

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Revision Petition No. 2774 of 2004

(From the order dated 03.09.2004 in Appeal No. 931 of 2003 of the State Commission, Uttaranchal)

1. Smt. Usha Rani Aggarwal
W/o Shri Ashok Kumar Aggarwal

2. Smt. Nirmala Devi Agarwal
W/o Shri Gokul Chand Aggarwal,
Both: Resident of: 9-486, Bhawani Ganj,
Haldwani , District Nainital, Uttaranchal
Through: Shri Gokul Chandra Agarwal

... Petitioners

Versus

Nagar Palika Parishad, Haldwani
District Nainital

Through: Its Executive Officer

... Respondent

Revision Petition No. 2775 of 2004

(From the order dated 03.09.2004 in Appeal No. 932 of 2003 of the State Commission, Uttaranchal)

Mukesh Kumar Aggarwal
S/o Shri Ashok Kumar Aggarwal
R/o 8/40, Shiv Puri, ,
Haldwani, District Nainital,
Uttaranchal ... Petitioner

Versus

Nagar Palika Parishad, Haldwani
District Nainital

Through: Its Executive officer

... Respondent

BEFORE:

HON'BLE MR. JUSTICE. M.B.SHAH, PRESIDENT

MRS. RAJYALASHMI RAO, MEMBER.

For the Petitioner in both the Petitions : Mr. Gokul Chand Aggarwal, Authorised Representative

For the Respondent in both the Petitions : Mr. Amit Goel, Advocate

DATED: 6th THE SEPTEMBER, 2006

O R D E R
M.B.SHAH, J. PRESIDENT:

Revision Petition No. 2775 of 2004:

It is the case of the Complainant that he is the owner of property of House No.8/40 situated at Shivpuri, Haldwani, and that the septic tank installed in his house was required to be cleaned, as per the rules. Therefore, he filed an application in the office of the Nagar Palika, Haldwani, Respondent, and deposited Rs.200/- as fees as directed. On his repeated requests he was informed by the officers of the Respondent that the employees of the Respondent would come and clean the septic tank. When he insisted, the officers rudely behaved and insulted him and informed him that whenever they think fit, they will send their employees.

As the employees of the Respondent had not carried out any cleaning work and the septic tank became full, it started emitting foul smell. Hence, he was compelled to call some other sweepers and get his septic tank cleaned by incurring expenses amounting to Rs.1,050/-. It is his contention that the Respondent acted mala fide and harassed him for some oblique purpose, even after receiving requisite fee for carrying out the work. Hence, he preferred Case No.285 of 2001 before the District Forum, Nainital. After adverting to the evidence led by the Complainant as well as the receipt of Rs.200/- and also the copies of the letters written by the Complainant to the Respondent, the District Forum arrived at the conclusion that the Complainant was consumer within the meaning of the Consumer Protection Act, 1986, and that the action of the officers of the Respondent was mala fide as they have failed to discharge their duty and obligation in the manner prescribed by the Rules. Hence, the complaint was partly allowed and the Respondents were directed to refund the sum of Rs.200/- deposited by the Complainant, to pay Rs.1,050/- on account of the expenses incurred by the Complainant, and Rs.1,000/- for mental agony suffered by him.

The District Forum also directed the Respondent to pay the costs of Rs.1,250/-.

Against that order, the Respondent – Nagar Palika preferred Appeal No. 932 of 2003

before the State Commission, Uttaranchal. That appeal was partly allowed.

The State Commission arrived at the conclusion that a sum of Rs.200/- was charged for cleaning the soak pit but the same was not cleaned, and, therefore, there was deficiency in service.

At that stage, the Nagar Palika informed the State Commission that they were ready to refund the amount. The State Commission also awarded compensation of Rs.500/- as the Complainant was required to go to the office of Nagar Palika twice or thrice and was required to move a number of applications. The rest of the order passed by the District Forum was set aside.

Against that order, the Complainant has preferred this Revision Petition.

At the time of hearing of the Revision Petition, it is not disputed that the Nagar Palika has received Rs.200/- for cleaning the septic tank. Further, under the U.P. Municipalities Act, 1916, the scavenging tax was also imposed and a conservancy tax for the collection, removal and disposal of excrementitious and polluted matter from privies, urinals, and cesspools. Section 195 defines

‘house-scavenging’ means, ‘the removal of filth, rubbish, odour, or other offensive matter from the

dustbin, privy, cesspool or other receptacle for such matter in operating to a house or a building’.

In the context of the aforesaid facts, this would be a clear case of deficiency in service.

Section 2(1)(g) of the Consumer Protection Act, 1986, which defines ‘deficiency’ to mean – “any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service”.

Apart from the aforesaid facts, even for the service of cleaning prescribed charge of Rs.200/- was deposited by the Complainant. In these set of circumstances, this is a clear case of deficiency in rendering service and harassment by the Respondent for oblique motive.

For dealing with such harassment it would be apt to refer to the law laid down by the in Lucknow Development Authority Vs. M.K.Gupta[1].

“The jurisdiction and power of the courts to indemnify a citizen for injury suffered due to abuse of power by public authorities is founded as observed by Lord Hailsham in *Cassell & Co. Ltd. v. Broome*[2] on the principle that, ‘an award of exemplary damages can serve a useful purpose in vindicating the strength of law’. An ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. That is provided by the rule of law. It acts as a check on arbitrary and capricious exercise of power. In *Rookes v. Barnard*[3] it was observed by Lord Devlin, ‘the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service’. A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it. Compensation or damage as explained earlier may arise even when the officer discharges his duty honestly and bona fide.

But when it arises due to arbitrary or capricious behaviour then it loses its individual character and assumes social significance. Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. Crime and corruption thrive and prosper in the society due to lack of public resistance. Nothing is more damaging than the feeling of helplessness. An ordinary citizen instead of complaining and fighting succumbs to the pressure of undesirable functioning in offices instead of standing against it.” The Court also observed that the Consumer Protection Act attempts to remove the helplessness of a consumer which he faces against powerful business, described as, ‘**a network of rackets**’ or a society in which,

‘producers have secured power’ to ‘rob the rest’ and the might of public bodies which are degenerating into storehouses of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked. The malady is becoming so rampant, widespread and deep that the society instead of bothering, complaining and fighting against it, is accepting it as part of life. And, thereafter, to control such a situation the Court directed the Consumer Fora as under:

“It should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries.”

From the facts stated above and the law as enunciated by the , this is a clear case of deficiency in service, and also harassment to a common man who cannot match the might of the State instrumentalities. Against arbitrary action of the officers of the Respondent instead of feeling helplessness the Petitioner rightly knocked the doors of the Consumer Fora for the harassment and mental agony.

Hence, the Complainant is required to be adequately compensated.

In this view of the matter, this Revision Petition is allowed. The impugned order passed by the State Commission is set aside. The Respondents are directed to pay in all Rs.10,000/- as compensation including cost of litigation, to the Complainant. It is open to the Nagar Palika to recover the said amount from the concerned defaulting employee(s).

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The next case of the Complainants is that they are the owners of building No.8-486 situated at Bhawaniganj, Haldwani. The said building was constructed in 1986. The

value of the property was assessed at Rs.5,50,000/- on which house tax was to be paid at 4% which comes to Rs.22,000/-.

The Tax Assessment Committee of the Nagar Palika, Haldwani vide orders dated 26.10.1996 increased the tax to be levied on the property to Rs.1,83,817/- for the period 1996-2001. The Complainants challenged the said order by filing an appeal before the Chief Judicial Magistrate, Nainital. The Chief Judicial Magistrate vide his order dated 29.7.2000 set aside the order of the Tax Assessment Committee and assessed the tax at Rs.32,000/- of the said building for the period 1996-2001.

The Chief Executive Officer, Nagarpalika summoned the Complainants on 16.8.2000 with regard to assessment of the new construction made by the Complainants. After hearing the representative of the Complainants, the Tax Assessment Committee passed an order on 21.8.2000.

After adjustment of the assessment as ordered by the Chief Judicial Magistrate the Complainants were required to pay Rs.12,000/-. The Complainants had already deposited the amount of Rs.13,786.00 on 13.11.1996. So an amount of Rs.1,786/- was lying to the credit of the Complainants with the Nagar Palika.

The Complainants filed an application on 25.8.2000 on Rs.10/- stamp paper for obtaining the copy of the assessment order dated 21.8.2000 in respect of the newly constructed portion. Copy of the assessment order was not given to the Complainants in spite of reminders dated 25.11.2000 and 1.1.2001. Non-supply of the assessment order has given rise to the filing of the complaint before the District Forum.

It is the say of the Complainants that they were not given the copy of the assessment order since they filed appeal against the order of the Executive Officer, Nagar Palika, and for other oblique motive.

Hence, the Complainants approached the District Forum, Nainital by filing complaint No. 284 of 2001. They also prayed for grant of compensation for harassment and mental agony and also economic loss which was suffered by them for pursuing the remedy and prayed for a sum of Rs.14,000/-.

Nagar Palika contended that the copy of the assessment order was not given to the Complainants because the Nagar Palika had preferred an appeal against the said order before the Chief Judicial Magistrate. It was also contended that the Complainants cannot be said to be a consumers under the Consumer Protection Act, 1986.

The complaint was partly allowed by the District Forum, Nainital by its order dated 9.7.2003. The District Forum held that the Tax Department of the Nagar Palika acted arbitrarily and with oblique motive and harassed the Complainants by adopting various tactics and for no justifiable reason the copy of the assessment order was not given to the Complainants despite the fact that the file was available in the office of the Nagar Palika. Hence a direction was given to the Nagar Palika to issue a copy of the assessment order and it also directed the Nagar Palika to pay Rs.15,000/- as compensation for harassment and mental agony and to pay Rs.1,000/- as litigation expenses.

Against that order, the Nagar Palika preferred appeal No. 931 of 2003 before the State Commission, Uttaranchal. The State Commission by its order dated 3.9.2004 allowed the appeal on the ground that Consumer Fora would have no jurisdiction to entertain such claim and gave liberty to the Complainants to approach competent court or authority.

Hence, the Complainants preferred this Revision Petition.

At the time of admission, after issuing notice, we have heard the Authorised Representative of the Complainants and also learned Counsel for the Nagar Palika and on 5.7.2006 learned Counsel for Nagar Palika agreed that the act of the Nagar Palika in not giving the assessment order cannot be justified on any count and was apparently mala fide one, and, submitted that he would see that the assessment order is delivered to the Complainants by 15th August, 2006.

In compliance with the said order, learned Counsel appearing for the Nagar Palika submitted that the assessment order dated 21.8.2000 was handed over to the Complainants.

At this stage we have heard the representative of the Complainants as well as the learned Counsel for the Respondent on merits of this Revision Petition.

The representative of the Complainants submitted that the officers of the Nagar Palika for oblique motive and only to harass the Complainants refused to give true copy of the assessment order to the Complainants on one or the other pretext, even though it is a public document. It is his contention that apart from the provisions of the Consumer Protection Act, 1986, under the Right to Information Act, 2005, this would be an offence. Hence, the officers should be appropriately dealt with. It is his contention that for obtaining true copy of the assessment order the Complainants were required to approach various authorities, as well as the District Forum and were required to spend a large amount. For this purpose, adequate compensation should be awarded as provided under Section 14(1)(d) of the Consumer Protection Act, 1986. He further pointed out that for getting assessment order the Complainants were required to deposit a stamp paper worth Rs.10/-, and, therefore, they are consumers for the services to be provided by the Nagar Palika.

As against this, learned Counsel for the Nagar Palika submitted that there is no question of any consumer dispute involved in the present case because non-supply of the copy by the statutory authority would not be covered under the provisions of the Consumer Protection Act,

1986, as no question of rendering of any service arises.

In our view, the aforesaid submission of the learned Counsel for the Respondent cannot be accepted. This would be a case of deficiency in service, because the assessment order was passed by the Executive Officer of the Nagar Palika in the proceedings remitted by the Appellate Authority, Chief Judicial Magistrate, Nainital. The assessment order was with regard to the premises belonging to the Complainants. This was a statutory duty prescribed under the existing law. It is not required to be reiterated that once the assessment order is passed, against or in favour of the Complainants, the same is required to be communicated. That is a manner of performance of the statutory duty, and that is one part of the service which is required to be rendered by the Nagar Palika. Even though the duty to

decide the objections with regard to the assessment by the Executive Committee or other authority of the Nagar Palika, may be quasi judicial or administrative function. But, the final order passed in the said proceeding is required to be communicated in the manner prescribed under the law. That duty, if not performed, it would be deficiency in service.

Complainants would be consumers because for getting assessment order they were required to deposit a sum of Rs.10/-. Hence, this is also a case of mala fide exercise of power by the officers of the Nagar Palika. For no fault of the Complainants they were required to approach one or the other authority for getting copy of the assessment order passed by the authority with regard to his premises. Hence, in this case also the ratio of the decision rendered by the Lucknow Development Authority (supra) is required to be implemented. Because, the officers of the Nagar Palika, a statutory authority, have acted maliciously and the same has resulted in harassment and agony to the Complainants. The same is abuse of power. If this is tolerated, as observed by the , crime and corruption would thrive and prosper in the society due to lack of public resistance.

In the result, the order passed by the State Commission is set aside. The Respondent is directed to pay a compensation of Rs.10,000/- to the Complainants, which shall include cost of litigation in the three Fora.

It is open to the Nagar Palika to recover the said amount from the concerned defaulting employee(s).

Sd/-

.....J.

(M.B.SHAH)

PRESIDENT

Sd/-

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(RAJAYALAKSHMI RAO)

MEMBER

[1] (1994) 1 SCC 243

[2] 1972 AC 1027 : (1972) 1 All ER 801

[3] 1964 AC 1129 : (1964) 1 All ER 367, 410